IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 48 OF 1990.

Shri B.K. Kotru, Pune ... Applicant.

V/s.

The Commissioner of Income-tax,
Pune. ... Respondent.

Shri P.D. Damodar for the applicant.

Shri A. N. Kotangale with D.A. Dubey i/b K.C.Sidhwa for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 25.7.2005

ORAL JUDGMENT : (PER V.C.DAGA,J.)

. By this reference under section 256 of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the sum of Rs. 95,000/- is liable to be taxed in accordance with the provisions of sec. 17(3)(i) r/w sec. 17(1)(iv) of the Act for the assessment year 1980-81?

2. It is not in dispute that the assessee was in service with M/s Sandvik Asia Ltd. as an Industrial Officer. He expressed his desire to leave the service and sought waiver of six months notice period by accepting his resignation with

effect from 25.5.1979 allowing him to avail earned leave due to him from 2.3.1979 to 24.5.1979. It appears that the request of the assessee was accepted by his employer M/s Sandvik Asia Ltd. and on the same day, i.e. on 7.2.1979, his resignation was accepted permitting him to avail earned leave from 2.3.1979 to 24.5.1979. In the result, resignation became effective from 25.5.1979. With the operation of the resignation master and servant relationship came to an end on 25.5.1979 itself.

3. It appears from the statement of facts that the assessee was offered employement by competitors of M/s Sandvik Asia Ltd.; like M/s Widia & Drilleco. In order to prevent the assessee from accepting such offers, it appears that M/s Sandvik Asia Ltd. had offered additional amount of Rs.96,000/- to the assessee on his agreeing not to accept similar job in any other competing organisation for a minimum period of two years from 13.7.1979 and not to disclose or impart with any information/ knowledge or know how of the company products/processes which he may have acquired during his tenure with them. The assessee, on receipt of the said amount, executed restrictive covenant and undertook not to take any employment with any other competitors in lieu of payment of Rs.96,000/-. This payment of Rs.96,000/-, thus, can hardly be linked up with the salary, or perquisites and profits. The

receipt of this amount is after cessation of the employer and employee relationship. This receipt of amount, thus, can only be capital receipt. The Tribunal was, thus, not justified in treating it as part of the salary for the assessment year 1980-81. In view of our finding the question is answered in the negative i.e. in favour of the assesses and against the revenue.

. Reference accordingly stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**